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Beyond curricular design: why internationalisation matters in legal education

A few years ago, a New York Times editorial declared: “American legal education is in crisis”! It sounds dramatic and exceptional, but actually quite often, and almost everywhere, there is a feeling that legal education is not going well. When I was a law student at the University of São Paulo, in the early 1990s, legal education reform was on the agenda; as a law professor at the same university, almost 25 years later, I keep hearing similar anxieties about this issue.

In this context, the document delivered by the German Council of Science and Humanities (hereafter, “the Council” or “German Council”) provides a comprehensive analysis of German legal scholarship and education, and recommends several changes. The analysis is very well grounded and the recommendations seem to be realistic and feasible, which is not always the case regarding this topic.

Many of the issues discussed in this document are the same as those we have been discussing

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at the University of São Paulo. And the recommendations are also similar sometimes. To name a few: adopting course formats more prone to foster critical thought (e.g., seminars); strengthening the foundational subjects in the curriculum; reducing compulsory courses and the amount of required doctrinal material; strengthening interdisciplinary studies.

But the Council's document goes beyond and makes recommendations concerning other issues like the process of recruiting professors, publication practices and the internationalisation of German legal scholarship.

Although I would like to weigh in on most of these recommendations, I can only discuss a couple of issues. In these times of so-called “global” disciplines (e.g. global constitutional law), I decided to focus on the internationalisation process of legal scholarship.

Internationalisation

Internationalisation can mean different things such as the number of foreign students, the international mobility of students and/or professors, publications in other languages, international cooperation with foreign universities, professors and researchers teaching and researching in universities outside their countries, or even the incorporation of an international or comparative perspective in researching and teaching. Thus, internationalisation may relate to personal, institutional and substantial aspects.

I think that it is possible to contend that German law schools are highly internationalised in some aspects and less in others. I will explore some of these aspects below.

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The personal aspect

One central aspect of internationalisation is the presence of foreign academics researching and teaching in a given country. The conclusion of the Council in this aspect is quite clear: “The percentage of foreign professors in law is [...] below average”. The Council alludes to two possible causes: (i) foreign scholars do not fulfil the formal requirement of passing the first examination; and (ii) foreign scholars rarely specialise in German law. These explanations, and the recommendations following from them, deserve further commentary.

Establishing passing the first examination as a prerequisite is simply an insurmountable obstacle for internationalisation. A criminal law scholar from abroad, for instance, will not typically pass an examination with detailed questions on German private and public law, no matter how brilliant she is in her field of specialisation.

But even if the first examination requirement were fully abandoned (the Council’s document is rather modest in this regard, recommending merely that, in larger faculties, at least one chair could be filled with a candidate without the first examination), another obstacle remains: the habilitation. An academic without a habilitation has virtually no chances of securing a position at a German law school. This represents a substantial hurdle for foreign scholars. If it is possible to become a professor in almost any country with just a doctoral degree (or with even less), one would need a compelling reason for choosing to spend five (or more) years without a steady position in order to write a habilitation thesis and only then look for a job. German law schools risk losing outstanding (not only foreign, but also German) academics to more flexible – but not therefore less prestigious – schools in the UK and US, for instance.

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This leads to the second reason the Council provides for the absence of foreign professors in German law schools (“foreign scholars rarely specialise in German law”), which I do not think is a sound explanation either. And it is the German Council itself that provides a clue as to why, by acknowledging that “a number of German legal scholars have had successful careers abroad”.

How is this possible if (at least some of) these German scholars are not teaching German law (a subject which, following the rationale of the German Council, would be the only one a German scholar would be able to teach)? The reason is quite straightforward: a highly qualified scholar need not have studied in Germany to be able to teach German law (this is even more true in the cases of those who studied abroad but wrote their dissertation in Germany). The ability to teach is not limited by the subjects you learned during your law degree.

Nevertheless, irrespective of which explanation might be more plausible, it is a fact that increasing the number of foreign academics is not an easy task. Additionally, there is indeed a widespread belief that only those who grew up and did their entire education in a given country are able to teach (national) law. And this inexplicable belief is surely no German particularity.

The Council seems to assume that such a cultural variable is not easy to bypass and, instead of making unrealistic recommendations for the ordinary recruitment process, it focuses on the creation of research professorships for foreign visiting scholars. This may be a successful strategy for bringing about an immediate, even if minor, change in the landscape of German law schools and, in the long run, for challenging the commonly held belief mentioned above, resulting therefore not

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only in increasing the number of foreigners as visiting scholars but also as regular professors.

The international and comparative perspective

As a general rule, the fact that the subjects taught and researched in law schools are closely linked to a given (usually national) legal system tends to lead to a certain insularity. Foreign judicial decisions and/or legal scholarship are by and large ignored. A look at the bibliography and case list of a typical book on German constitutional law, for instance, will usually reveal only German works and decisions of German courts. What is being written or decided in other countries is usually not considered.

The recommendation of the Council is quite clear: “German legal scholarship should increase its responsiveness to foreign legal literature and go beyond the limits of national discourse”. And it may be argued that a precondition for this is that legal scholars must “at the very least be capable of reading and understanding legal texts written in English, preferably also those in other European languages”.

The ability to communicate in different languages is frequently underrated in academia. The common sense is that it is enough to speak English (and if your mother tongue is English, then you need nothing else). This is a big mistake. The main issue is how to promote academic multilingualism. Some simple requirements may have profound effects. At the law school of the University of São Paulo, for instance, in order to be accepted as a doctoral student, you must demonstrate that you can read at least in two foreign languages. Even before they start their doctorate, future professors are already encouraged to be multilingual. Knowing other languages is the first step to increasing the

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responsiveness to foreign legal literature (“an academic discipline like law, which deals with an object of inquiry that is constituted by language, can only broaden its perspective if it becomes multilingual”).

Another crucial recommendation for fostering such changes is to use “existing funding possibilities to spend time conducting research abroad”. Even though there are many German legal scholars who spend some time in other countries, it is astonishing how so few (if any) write their PhD abroad. Though it is not difficult to imagine the reason (if there are so many good law schools in Germany, why should I go abroad?), a different point of view would be also valid: because it is not only a question of how good the law school is, but also a question of broadening horizons, so a PhD abroad should always be a good option.

Conclusion

In Germany, the institutional structure of law schools, their curricular design, their pedagogical approach, as well as the recruitment process of new professors seem not to have undergone major changes in many decades. Still, German legal scholarship continues to be an export product and German law schools – with the indispensable support of the DAAD and the Humboldt Foundation – attract many doctoral and post-doc students, as well as experienced researchers from all over the world. So, why talk of reform?

In this text, I could comment on only one of the many issues with which the document of the German Council of Science and Humanities has dealt. Even if the subject I chose – internationalisation – is not the most important in the document, I am convinced that it is an issue with wide implications. The internationalisation issue, besides having effects on the education of lawyers and judges

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(as occurs with recommendations on curricular design) also bears on the education of new researchers and professors and, more importantly, affects the very position of the German academic system in a globalised world.

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Kai Purnhagen, Sa 22 Feb 2014 at 10:50

Being a German law scholar who has been educated both, in Germany and internationally, I highly agree with these observations. Thank you very much for these very insightful thoughts. There are a couple of observations that I would like to add: First, The German's obsession with grades. Even if a foreign scholar would go through the hassle of the German state exam and even if he would succeed, he would only be taken serious if he can make it up to the highest grades, although the German state exam tests mainly national law and the language requirements for a successful exam are quite high, even for a German. In German law school, there is a traditional tendency to appoint professors primarily on the basis of their grades

and/or belonging to a respective „family“, as these are traditional measurements for quality. Admittedly, the significance of the latter point („family“) is decreasing. However, the obsession with grades in the German law school largely remains. While this might make sense for professors teaching and researching in the core of national law (private and public law), one may doubt whether this practice makes also sense for those topics which are not within the core curriculum of the state exam. One may in fact doubt whether the state exam is a sufficient quality requirement for these chairs at all. Take EU law for example. The purpose of EU law is to integrate different legal systems for the sake of market establishment. I would put forward the thesis that someone who has lived and experienced difficulties with the integration in several countries, has studied and witnessed these challenges and different views on the effect of integration might be much better equipped to research and teach EU law than someone who has spent over ten years in German Universities only, acquiring both state examens (mainly national law), a doctorate and a habilitation from a German University, always being imbedded into the German environment only. I would go even one step further: Being trained solely in Germany and in German law (with maybe one alibi year for a LL.M. abroad) might be detrimental, as it creates a „home country bias“, which looks at other legislations and the EU legal order only in comparison to one's own legal system. This also leads to a „confirmation bias“, which leads people to look for confirmation of solutions from their own legal system in other systems only. Solutions which are similar to what one knows are hence „good“ solutions and others are „bad“. This creates an academic environment, which gets over time decoupled from all other research in this area on a global scale. But one should also take care: Only being abroad is not a quality requirement! One has to be a master of the law of the respective discipline, however, this quality can be measured in some cases much better by other means than the state exam or belonging to a respective „school“. If someone then has, in addition, a German state exam (with whatever grade), one shall be glad to get a master in his

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fields who might even have some understanding of German law in addition.

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